

Decision 05-04-014 April 7, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Telephone Company
dba SBC California to Modify D.94-09-065 to
Enable SBC California to Reduce Prices to Meet
Competition.

Application 04-03-035
(Filed March 30, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 04-11-022**

This decision awards \$46,469.10 in compensation to The Utility Reform Network (TURN) for its contribution to Decision (D.) 04-11-022.

1 Background

Pacific Bell Telephone Company dba SBC California (SBC) in this application sought Commission authorization to modify the price floors for tariffed charges established in D.94-09-065 (IRD Decision). TURN, among others, filed a protest to the application. At the prehearing conference (PHC) the assigned Administrative Law Judge (ALJ) set a briefing schedule for the proceeding and consolidated two then-pending SBC Advice Letters into the proceeding.

On November 19, 2004, the Commission issued D.04-11-022, in which it denied SBC's application but granted the relief requested in the Advice Letters.

2 Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

3 Procedural Issues

The PHC in this matter was held on July 2, 2004. TURN filed its timely NOI on July 27, 2004. On August 16, 2004, ALJ Bushey issued a ruling that found TURN eligible to seek compensation in this proceeding, and affirmed that TURN met the significant financial hardship test. TURN filed its request for compensation on January 19, 2005, within the required 60 days of D.04-11-022 being issued. No party opposes the request.

TURN has satisfied all the procedural requirements necessary to make its request for compensation.

4 Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN explained that D.04-11-022 resulted from the Commission ruling on SBC's motion for summary judgment. The Commission agreed with SBC that the issues were appropriate for summary judgment, but determined that the application was contrary to the principles articulated in the IRD decision and denied the application. TURN stated that the Commission adopted TURN's position on several issues in denying SBC's application.

Specifically, TURN stated that its legal brief and accompanying declaration showed the failure of local exchange competition in California, and that the Commission adopted this proposition in conclusion of law 7 of D.04-11-022. TURN also pointed out that it presented an extensive showing that SBC's proposal would result in customer harm. Consistent with this showing, the

¹ D.98-04-059, 79 CPUC2d, 628 at 653.

Commission determined that SBC's proposal was contrary to the public interest at this time.

TURN made a substantial contribution as described above. Having determined the scope of TURN's substantial contribution, we next look at whether the compensation requested is reasonable.

5 Reasonableness of Requested Compensation

TURN requests \$46,469.10 for its participation in this proceeding. Attorney and expert fees comprise the bulk of the costs, in addition to \$237.85 in other costs, as outlined below.

Attorney/Advocate Fees			
	Hours	Rates	
William Nusbaum	79.25	\$365	\$28,926.25
Comp	12.50	\$182.50	\$ 2,281.25
Regina Costa	50.25	\$230	\$11,557.50
Christine Mailloux	5.50	\$325	\$ 1,787.50
Robert Finkelstein	4.25	\$395	\$ 1,678.75
		Subtotal	\$46,231.25
Other Reasonable Costs			
Photocopying			\$ 88.20
Postage			\$ 2.21
Lexis			\$ 147.40
Phone			\$.04
		Subtotal	\$ 237.85
		TOTAL	\$46,469.10

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation. We must also assess whether the hours claimed for the customer's efforts that resulted in substantial contributions

to Commission decisions are reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.² Since we found that TURN's efforts made a substantial contribution to the delineated decision, we need not exclude any issues from TURN's award compensation.

To assist us in determining the reasonableness of the requested compensation in addition to the above factors, D.98-04-059 directed customers to demonstrate productivity by assigning reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation.

A primary issue in this proceeding was the request of SBC for authority to assess rates at below-cost levels when certain levels of competition could be reached. Due to the limited areas in the state with active competition, TURN showed that granting this request might result in a majority of customers paying higher rates to subsidize the below-cost prices offered to others. Though no precise monetary benefits to ratepayers were identified, TURN's participation resulted in an overall benefit to ratepayers by avoiding the potential future harm of subsidized rates and assisted the Commission in making its decision to deny the SBC application as not being in the public interest. We therefore find that TURN was productive participant in this proceeding.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. The

² TURN separated the hours associated with preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

Commission previously approved the 2004 hourly rates for Mailloux and Costa in D.04-12-054, and we adopt these rates here. TURN's proposed rates for Nusbaum and Finkelstein are based on 2003 rates from that same decision, escalated by 8%, as provided in Resolution ALJ-184, and rounded to the nearest \$5. This is consistent with our previous practice and we also adopt these hourly rates. We find all these rates reasonable.

The itemized direct expenses submitted by TURN include costs for photocopying, postage, and legal research. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

6 Award

As set forth in the table below, we award \$46,469.10.

Attorney/Advocate Fees			
	Hours	Rates	
William Nusbaum	79.25	\$365	\$28,926.25
comp	12.50	\$182.50	\$ 2,281.25
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Christine Mailloux	5.50	\$325	\$ 1,787.50
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Lexis			\$ 147.40
Phone			\$.04
		Subtotal	\$ 237.85
		TOTAL	\$46,469.10

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

The award is to be paid by SBC California as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7 Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8 Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.04-11-022 as described herein.
2. TURN requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$46,469.10.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.04-11-022.
2. TURN should be awarded \$46,469.10 for its contribution to D.04-11-022.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$46,469.10 as compensation for its substantial contributions to Decision 04-11-022.
2. Within 30 days of the effective date of this decision, Pacific Bell Telephone dba SBC California shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning the 75th day after

the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 04-03-035 is closed.

This order is effective today.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0504014	Modifies Decision?
Contribution Decision(s):	D0411022	
Proceeding(s):	A0403035	
Author:	ALJ Bushey	
Payer(s):	SBC	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	1/19/04	46,469.10	46,469.10	No	

Advocate Information

[illegible]